1943.

File No. O Stamp/43

Legal Department

H **BRANCH**

Subject:— Opinions under the Indian Stamps Act 1899

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E

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File No. O Stamp/43

C O N T E N T S.

Legal Department File No. C. Stamp/1943.

Sr. No.	R.I.No./C.No.	Subject	Pages.
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Rele.M.S./
14/6. 1576

C O N T E N T S.

Legal Department File No. O. Stamp/1943.

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Bhle.M.S.
14/9.

15/9

C O N T E N T S.

Legal Department File No. O. Stamp/1943.

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11.	4271 17/6/43.	Question whether the view that receipts passed by a native state in respect of all payments made by the state and in particular to the compensations under the reciprocal arrangement for taxation of motor vehicles sanctioned in G.R. R.D. No. 6552/3 XXIV, dated the 9th March 1928 are exempt from stamp duty in view of the orders issued in G.R. R.D. No. 10177/24, d. 1/9/29.	29-32.
12.	5210 1/9/43.	Question (1) whether it was necessary for the supdt. of stamps to have called for inspection the deed of hypothecation and (2) whether he supdt. can call for other documents for the purpose of certification under Sec. 16 and hold them to have been produced before him in the performance of his functions.	33-36.
13.	4071 9/9/43.	Question whether the document is chargeable with duty under Art. 58A of Sch. I r/w sec. 3(e).	37-40.
14.	7075 22/10/43.	Deed of partition -- adjudication of duty --	41-44.
15.	5164. 5/11/43.	Trust Deed -- Adjudication of Stamp duty on	45-48.
16.	1528 2/3/43.	Sec. 3, proviso (i) r/w sec. 29 Question whether an instrument the cost of which Govt. has by the terms of the instrument undertaken to bear would be exempt from stamp duty.	49-50.
17.	2015 7/12/43.	Deed of appointment of new Trustees -- Levy of stamp duty on --	51-52.
18.	2403 24/12/43.	Question whether letter dated 15/10/42 from Vithal Purshottam & Sons to Machine Tools & Eng. Co. Ltd can be construed as a Conveyance.	53-54.

Rele.M.S.
14/6.

1514

Office of the R.L.A.

This is a question of the stamp duty to be levied on a deed of conveyance which has been impounded by the Sub-Registrar, Viramgam. The transaction between the parties resulted in the transfer of certain moveable and immoveable property together valued at Rs. 5,25,000. The question is whether the conveyance deed in which for stamp duty the consideration was estimated to be Rs. 60.000 has transferred the whole of that property or only a part equal to Rs. 60,000.

2. Article 23 of the Indian Stamp Act prescribes that on a conveyance the stamp duty shall be charged on the amount or value of the consideration as set forth in the deed. It follows that the revenue authorities cannot go beyond the valuation which is set forth in the deed or examine extrinsic evidence of the value of the consideration. But it does not follow that they must have regard only to what the parties to the instrument state in a certain part of the document the consideration to be. The duty "must be assessed upon the amount of value of the consideration for the transfer as disclosed upon an examination of the terms of the instrument as a whole". (I.L.R.13 Rangoon 613). Now in this case the parties in the deed of argument agreed to transfer the lands, hereditaments and premises together with "all the moveable machinery, plants, implements, fixtures and ~~xxxxx~~ fittings, furniture and engines, boilers and all other moveable properties lying in the premises of the vendor company except cotton cloth, yarn, wastes, new unused stores, coal etc. The price was fixed at Rs. 5,25,000. By the resulting conveyance deed the parties transferred the pieces or

parcels of freehold lands situate at Viramgam and described in Schedule A "together withall mills, out-houses, godowns, buildings, yards, wells, water, water-courses, sewers, ditches, drains, lights libertities, easements profits, privileges and appurtenances whatsoever to the said lands, hereditaments and premises". Now in the first place it does not seem to be correct to state, as the parties to that all the machinery fixtured generally are moveable property. "Immoveable property" is defined in the General Clauses Act as including land, benefits to arise out of land, and things attached to the earth. In section 3 of the Transfer of Property Act, the phrase "attached to the earth" is defined as meaning (b) imbedded in the earth, as in the case of walls or buildings, or (c) attached to what is so imbedded for the permanent beneficial enjoyment of that to which it is attached". The land, the buildings on the land and the fixed machinery would all be immoveable property. Further in the operative part of the document the parties purport to transfer the mills. The mills can hardly be confined to the buildings whihh house machinery and other fixtures. Some at least of the machinery and fixtures must be includ in that term. Part of the property transferred may have been moveable, but the parties are certainly not justified in describing everything other than the land and building as moveable property.

3. It is open to the parties to transfer by a deed only part of the property involved in the transaction for a part of the total consideration. The moveable property for example may be transferred by delivery only and need not be transferred by deed. But in the present case, although there may be moveable property which is transferred, it is nowhere stated that the moveable property has been separately transferred or is going to be separately transferred. The

operative part of this document seems to transfer all the property concerned in the transaction. The clause restricting the conveyance to the lands hereditaments and premises together with its structures standing thereon is in the preamble to the operative part of the document and not in the operative part itself. This restrictive clause seems merely advice to evade stamp duty. The amount chosen as the amount of consideration also seems an abnormally small proportion of the total value of the property transferred. I agree with the Under Secretary, R.D., that the consideration in this case ought to be taken as Rs. 5,25,000. The document does not put the facts of the transfer satisfactorily before the Revenue Authorities and it seems right for Government to maintain its maximum claim even if there be some doubt in this case, until it's claim is modified by a Civil Court.

Id/-

28/1

Remembrancer of Legal Affairs.

U.R. to R.D. 742 , dated the 29th January 1945.

MER.

No. 1803

Office of the
Remembrancer of Legal Affairs.
Bombay Castle, 18th March 1943.

From

P.N. Moos, Esquire, Bar.at.law, I.C.S.
Remembrancer of Legal Affairs,

To

The Superintendent of Stamps,
Bombay.

Subject:- Stamp duty on declaration of wakf by Yesmanbai widow of Usman Haji Suleman Darwesh dated 18-9-1942.

Sir,

With reference to your letter No. 18696/S dated the 31st December 1942, on the subject noted above, I have the honour to state as under:-

2 It appears that one Yesmabai, widow of Usman Haji Suleman Darwesh being possessed of and beneficially entitled to the sum of Rs.70,000/- executed a document a document purporting to make by Wakf-Ul-Avlad provision for hereself during her life-time and on her death for her lineal descendants and then on the extinction of the line for charitable purposes as recognised by the Hanafi Sunni Mahomedan law. The document is stamped with a stamp of Rs. 15 under Art. 64 of the Schedule to the Indian Stamp Act, 1899. In the opinion of the Superintendent of Stamps the document is a deed of settlement and chargeable with a stamp duty of Rs.525/- under Art.58. The two points referred to the R.L.A. for opinion are:-

(1) Whether to constitute a "disposition of property" referred to in the definition of "settlement" in the Stamp Act it is necessary that the property should be transferred to a person other than the Settlor, either independantly or jointly, with the Settlor.

(2) Whether an instrument by which property is disposed of First for the provision of the Settlor him-

himself and subsequently after his death for the purpose of providing for his family or dependents or for religious and charitable purposes would come under the Art. 58 of the Schedule to the Indian Stamp Act.,

3 "Settlement" as defined by section 2(24) of the Indian Stamp Act, means "any non-testamentary disposition, in writing....made,

(a) * ** * * * * *

(b) for thepurpose of distributing property of the settlor among his family or those for whom he desires to provide.....or

(c) for any religious purpose;

and includes an agreement in writing to make such a disposition and where any such disposition has not been made in writing, any instrument recording, whether by way of declaration of trust or otherwise, the terms of any such disposition"

The answer to question (1) propounded in the letter of the Superintendent of Stamps appears to be contained in the provisions of section 5 of the Transfer of Property Act as amended by the Act of 1929. The said section, as so amended, defines "transfer of property" as "an act by which a living person conveysproperty, in present or in future, to one or more other living persons, or to himself, or to himself and one or more other living persons; and to xxx transfer property is to perform such an act". It is, therefore, clear that in terms of the definition of a 'Transfer of property', it is not necessary in order to constitute a transfer or disposition of property, that the owner should transfer it to some person other than himself. The amendment of the said section would appear to be designed particularly xx for the case where a person declares a trust of his property and appoints himself the sole trustee. The effect of declaring the Wakf in question is that the Settlor transfers the ownership of the trust funds to herself in her capacity as a trustee. Assuming that the Declaration of Wakf does NSR.

not constitute a disposition of property, even so, the instrument would attract the operation of the concluding portion of section 2(24) of the Indian Stamp Act, as it records the terms on which the trust funds are to be held by the trustee, or in other words, the terms of the disposition of the funds.

4. By the execution of the Declaration the trust funds vested in the Settlor in her capacity as a trustee to be held by her on the terms and for the purposes contained in the Declaration. Thus the instrument came into effect immediately on its execution. The reservation of the life estate in favour of the settlor does not render the instrument any less as settlement. It has been so held in Crossman v. The Queen 18 Q.B.D., 256 and Attorney General v. Heywood 19 Q.B.D., 326 referred to in 20 Bom. 210. The answer to question (2) in the letter of the Superintendent of Stamps is accordingly in the affirmative.

The document forwarded by you is returned herewith.

Yours obedient servant,

Id/- P.N.M.
11/3
Remembrancer of Legal Affairs.

Opinion in Re. Adjudication of Stamp Duty on Gujarati document dated 15th November 1948.

Radhabai

To

Ochhavlal Sakalchand & another.

This reference is regarding the proper stamp duty to be paid on an agreement between Bai Radhabai widow of Sheth Haridas Harandas and the two surviving partners of her late husband's firm. The following is the Superintendent of Stamp's summary of the terms of this Agreement :-

"Seth Haridas Harandas, Ochhavlal Sakalchand and Ochhavlal Pranlal were carrying on business in partnership in the name and style of the firm Ochhavlal Gopaldas. Seth Haridas died on 20-12-41. By his last Will he appointed his wife Radhabai as the Executrix. The partnership was dissolved by the death of Haridas and the business was carried on by the continuing partners in partnership between them.

A sum of Rs. 76,236-5-3 was due as his share to Seth Haridas Harandas' estate in the deposit account. A further lump sum of Rs. 90,001/- was decided to be paid to the estate of the deceased as the share of profit. These two sums of Rs. 76,236-5-3 and Rs. 90.001/- were credited in the account of Haridas in full settlement of his share. A balance of Rs. 1,25,166-11-6 was standing to the credit of the account of Haridas on 4-11-48. Ochhavlal Sakalchand and Ochhavlal Pranlal paid the amount to Radhabai by crediting it by making Havala entries in the account of Radhabai. Debts and liabilities of the partnership are to be borne by the Continuing Partners and Radhabhai is not responsible for them. Outstandings are to be collected by the Continuing MSR.

Partners and Radhabai has to give her consent, if necessary, in realising the amounts. The Income Tax for the years 1997 and 1998 is to be borne by each party personally. Excess Profit Tax for 1997 was agreed to be shared equally by the three partners. Excess Profit Tax for 1998 of theshare of Radhabai was agreed to be paid to Chhavilal Sakalchand and Chhavlal Pranlal in the proportion of the profit and interest which she may have received.

The Continuing Partners became the owners of all the rights and interest of the late Seth Haridas in respect of the capital assets, outstandings, good-will etc. and Radhabai has no interest in the partnership business as Executrix and heir of the deceased Haridas.

Lastly it has been stated that the parties have no claim or liability upon or to each other whatsoever in the partnership except those shown above and they have agreed to execute the necessary deeds."

The Superintendent thinks the document ought to be stamped (1) as a Dissolution of Partnership under Article 46-B,(2) as a Release by the widow Radhabai under Article 55(b), (3) as a Conveyance under Article 23 on the amount of Rs. 1,66,257-5-3, and (4) as an Agreement under Article 5(e). The Solicitors maintain that it is not a Dissolution of Partnership, nor is it a Conveyance. The case has been referred to the R.L.A. for advice.

2. Under section 42(d) of the Indian Partnership Act, 1932 subject to contract between the parties a firm is dissolved by the death of a partner. It is recorded in the instrument in question that the partnership was dissolved by the death of Sheth Haridas and the continuing partners of the said firm Chhavlal Sakalchand and Chhavlal Pranlal carried on the said business of the firm in partnership between them on their own account and at their risk. The dissolution of the partnership being not effected by the instrument, it would

not be liable to a stamp duty under article 46 of Schedule I to the Indian Stamp Act.

3. Regarding the liability of the document to be stamped as a conveyance, a sum of Rs. 1,66,237-5-3 is stated to have been paid to the executrix of the deceased partner on account of the monies due by the partnership to the estate of the deceased. This amount is made up of two sums of Rs. 76,236-5-3 and Rs. 90,001 respectively. On the facts as stated in the document it appears that the said sum of Rs. 90,001 represents the share of profits of the deceased partner which had accrued due and was payable to him during his life time although this is not clearly stated. If that is the position it is doubtful if this amount of Rs. 90,001 can be treated as forming part of the consideration for transfer by the executrix of the share of the deceased in the capital and assets of the partnership in favour of the continuing partners.

4. Clause 6 of the agreement is in the form of a recital purporting to set out the legal effects of the arrangement that has been arrived at between the parties and merely states that the continuing partners have thereby become solely entitled to all capital and assets etc. of the partnership including the share of the deceased therein. But though in form a recital this clause in effect operates conveyance by the executrix of the share of the deceased in the capital and assets of the partnership in favour of the continuing partners and the consideration for such conveyance appears to be the sum of Rs. 76,236-5-3 paid to the executrix by the continuing partners, representing the share of the deceased in the deposit account of the firm which forms part of the capital and assets of the partnership. The document accordingly is liable to be stamped as a conveyance for

a consideration amounting to Rs. 76,236-8-8. The document is also liable to be stamped as a deed of release and as an agreement.

Id/- P.N.M.
8/4.
Remembrancer of Legal Affairs.

Bombay,
the April 1945

No. 2340
Office of the
Remembrancer of Legal Affairs,
Bombay Castle, 30th March 1943.

From

P. M. Moos, Esquire, Bar-at-law, I.C.S.,
Remembrancer of Legal Affairs.

To

The Superintendent of Stamps, Bombay.

Subject: Refund of stamp duty paid on Bill of Exchange.

Sir,

With reference to your letter No. 277/R dated the 18th January 1943 I have the honour to state as follows:-

The bill of exchange drawn by the Bombay Company on 5th December 1942 and endorsed by themselves as payees bears adhesive stamps. Although it is stated that there was a mistake in stamping this bill of exchge the fact appears to be merely that the Company later changed its mind and decided to have two bills instead of one. Accordingly two fresh bills of exchange with the proper amount of stamp duty were subsequently executed and substituted for the one drawn on 5th December 1942. The question for consideration is whether refund of stamp duty paid on the bill of exchange drawn on 5th December 1942 can be claime Section 49 of the Indian Stamp Act, 1899, provides for making allowance for impressed stamps spoiled in cases mentioned in clauses (a) to (d). There are two kinds of stamps for indicating the payment of duty with which inst uments are chargeable, namely, (a) impressed stamps and (b) adhesive stamps (see rule 3(2) of the Bombay Stamp Rules, 1939.) Since the bill of exchange drawn on 5th december 1942 bears adhesive stamps, section 49 will have no application. Nor has section 52 which provides for allowance for misused stamps, any application. Consequent

MSR.

-ly no refund can be claimed by the Company under these sections.

2. The Bill of exchange executed by Killic Nixon and Company on 17-11-1942 and endorsed by themselves as payees also bears adhesive stamps. But this bill of exchange being a sight bill did not require any stamp at all and consequently afresh unstamped bill of exchange has been substituted for it. The question for consideration is whether refund of stamp duty paid on the bill of exchange drawn on 17th November 1942 can be claimed under section 52(a) Clause (a) of section 52 which is a general provision provides for allowance when any person has inadvertently used any stamp for an instrument not chargeable with duty. The bill of exchange drawn on 17th November 1942 being one ~~xxxxxxx~~ payable on demand was exempt from stamp duty (see Act V of 1927; Mulla's Stamp Act, p. 185). Consequently refund of stamp duty paid thereon can be granted under clause (a) of section 52.

3. It appears from your letter that the practice hitherto followed by your office is to grant refunds for spoiled stamps on bills of exchange only in cases falling under sub-clauses (1) and (2) of clause (c) of section 49. That practice does not appear to be correct. There is no reason why section 52 which is a general provision should not also be applied in suitable cases. The view taken by you is correct.

4. The two sets of bill of exchange are returned herewith.

Yours obedient servant,

Id/- P.N.M.
30/3.

Remembrancer of Legal Affairs.

MSR.

Office of the R. L. A.

Accountant General's view that the receipt sent to the remitter can be treated as a valid receipt is correct. If the remitter were a private person, he would not be entitled in similar circumstances to demand a separate stamped receipt. See Emperor Vs. Balmukund 34 All. 198 There appears no reason why Government should require a separate stamped receipt.

Id/- P.N.M.
13/4
Examiner of Legal Affairs.

U.R. to F.D. No. 2736, dated the 14th April 1943.

Letter. No. 2886

Office of the
Remembrancer of Legal Affairs.
Bombay Castle, 20th April 1943.

To

The Superintendent of Stamps, Bombay.

Subject:- Deed of covenant in duplicate.

With reference to letter No. 1876/S, dated the 6th March 1943, on the subject noted above, I have the honour to state as under:-

2. Normally duplicates are executed at the same time as the original. There appears to be no law to the effect that they must be executed at the same time and bear the same date. The duplicate and original are exact copies in this case except for the dates of execution at the end of the documents. In some cases that might be a material difference but in the present case there is nothing to show that it is material. It appears to be within the discretion of the Superintendent to stamp the document in question as a duplicate. There appears to be no law on the point.

3. The two documents forwarded by you are returned herewith.

Id/-
19/4.
Remembrancer of Legal Affairs.

No. 3691 .
Office of the
Remembrancer of Legal Affairs.
Bombay Castle, 20th May 1943.

From

P.M. Moos, Esquire, Bar-at-Law, I.C.S.,
Remembrancer of Legal Affairs.

To

The Superintendent of Stamps,
Bombay.

Sir,

With reference to your letter No. 2115/3 dated the 15th March 1943, I have the honour to observe as under :-

The question referred relates to the value to be given to two policies of insurance for the purposes of stamp duty on a deed of settlement. The face value of the two policies is Rs. 4,000/- The surrender value is Rs. 432-3-0. The difference in stamp duty would be Rs. 37-8-0, according as one or the other value is taken. An important fact in this case is that the deed of settlement makes provision for the settlor to keep up the policies. The settlor has also power to direct the trustees to surrender, exchange or sell the policies. The questions which the superintendent of Stamps has referred are these

(a) What is the value of policy of Insurance for the purpose of calculating stamp duty when it forms part of property transferred for no consideration, e.g. a gift or a settlement etc. where duty is leviable on the value of the property?

(b) If it is not the face value is it affected in any way by the policy holder (transferor) undertaking to pay future premiums and to keep it alive?

(c) If it is the face value is it in any way

affected by the policy holder (transferor) reserving to himself the right to surrender or sell it.

The Indian Stamp Act makes no specific provision for a case like the present. Articles 47D and 62(c), under which a policy of insurance and the transfer of a policy or insurance are chargeable, are not of assistance in deciding the present matter. I have been unable to find any reported acase in India on the point. However, the English Stamp Act makes specific provision for such cases; (See section 104 of the Stamp Act, 1891; see also Duke of Northumberland v. Commissioner of Inland Revenue, 1911, 2 K.B. 1011; and Halsbury's Vol. 28, p.473). There the determining factor is whether provision is made for keeping up the policy. If no provision is made, then the surrender value is chargeable with duty. If provision is made, then the face value is chargeable with duty. If That appears to be a very reasonable criterion and until an Indian authority to the contrary is found the revenue authorities may accept that criterion. There appears to be no substance in the Solicitor's contention that the policies are to be deemed securities for the purposes of section 21 of the Indian Stamp Act.

This case is complicated by the fact that the settlor has reserved to himself the right to direct the trustees to sell, exchange or sell the policies. It is not clear how likely it is that the settlor will exercise that power and in what circumstances he will exercise that power. But the broad fact is that provision has been made for keeping up the policies. I do not think that the revenue authorities can be reasonably expected to take into account that the provision is subject to the settlor's power todir ct surrender exchange or sale.

The documents received with your letter under reference are returned herewith.

Yours obedient servant.
Id/- P.N.N.
19/7/

MSR. Ramam

No. 4122
Office of the
Remembrancer of Legal Affairs,
Bombay Castle. 9th June 1945.

From

P.N. Moos, Esquire, Bar-at-Law, I.C.S.,
Remembrancer of Legal Affairs;

To

The Superintendent of Stamps
BOMBAY.

Re: Lease of Plot No. 120,
Shivaji Park Scheme at Mahim.

Sir,

With reference to your letter No. 3064/S, dated the 13th April 1945, on the above subject, I have the honour to observe as under:-

By a lease dated 2nd January 1942, the Municipal Corporation of Bombay demised to the lessee plot No. 120 of the Shivaji Park Scheme for a term of 999 years on an annual rent of Rs. 1116/-. One of the provisions of the lease (vide proviso 7) was that if during the period of the lease the lessee desired to commute the rent payable thereunder, the Corporation should, on the lessee paying them Rs. 20,088/- and on the original lease being surrendered, grant on fresh lease for the remaining period at a nominal annual rent of Rupee one. In accordance with this provision the lessee paid to the Corporation Rs. 20,088 and surrendered the lease. The Corporation on their part agreed to grant a fresh lease at a nominal rent of Rupee one per year. You state that from the recitals in the surrender, it appears tht th-e fresh lease on a nominal rent of Rupee one was agreed to be granted on two conditions, namely :-

(1) that the original lease be surrendered;a

(2) that amount of Rs.20,088/- (which is termed the commuted rent) be paid by the lessee to the

lessor. You therefore consider that the consideration for the fresh lease would be the surrender of the previous lease and the payment of Rs. 20,088 plus the nominal annual rent reserved for the fresh lease chargeable with duty under Art. 35(c). The Corporation contends that the levy of duty on this amount of Rs. 20,088 means charging duty on the rent twice over and therefore the lease should be stamped on the annual rent of Rupee one only.

The surrender of the lease is in pursuance of the terms contained in the old lease dated 2nd January 1942, proviso (7) of which provided that if the Lessee at any time during the period of the lease desired to commute the rent payable thereunder, paid to the Corporation Rs. 20,088/- and surrendered the existing lease, the Corporation should execute a new lease. The Lessee has already surrendered the lease and paid Rs. 20.088/- as provided in the old lease and consequently the Corporation has nowto execute a new lease. The amount paid can hardly be regarded as "advance payment of rent", or as part of rent received. It is a premium paid for commutation of rent. Under the lease, the nominal rent of Re. 1/- per year has to be paid in addition to the amount paid along with the surrender of lease. The lease recites that it is "in consideration of surrender of even date etc.". But that is not the sole consideration. The real consideration is mentioned in the surrender deed, and that includes the payment of Rs. 20,088/- to the Corporation. I agree with your view of the consideration in this case.

The documents received with your letter under reference are returned herewith.

Yours obedient servant,

Id/- P.N.M.

7/6/43.

Remembrancer of Legal Affairs.

MER.

Office of the R. L. A.

It appears that the practice in the Court of Small Causes, Bombay, in the matter of drawing up vakalatnamas is to write on the face of a stamped paper only the number of the suit and the names of parties and then to attach a printed vakalatnama to the stamped paper containing the usual recitals together wit the names of the parties and the number of the suit. The question for the consideration of the R.L.A. is whether this practice contravenes the previsions of section 13 of the Indian Act read with rule 7(2) of the Bombay Stamp Rules, 1939.

Section 13 of the Indian Stamp Act provides that every instrument written upon paper stamped with an impressed stamp shall be written in such manner that the stamp may appear on the face of the instrument and cannot be used for or applied to any other instrument. Sub-rule (2) of rule 7 of the Bombay Stamp Rules, 1939, provides that where a single sheet of paper, not being paper bearing an impressed hundi stamp is insufficient to admit of the entire instrument being written on the side of the paper which bears the stamp, so much plain paper may be subjoined thereto as may be necessary for the complete writing of such instrument. The proviso to that rule provides that in every such case a substantial part of the instrument shall be written on the sheet which bears the stamp before any part is written on the plain paper subjoined. The form of vakalatnama in question sufficiently complies with the provisions of section 13 of the Stamp, Act, but is not strictly in keeping with rule 7(2) of the Bombay Stamp Rules. In the first place it is doubtful whether a substantial part of the instrument is written on the

stamped paper. Secondly one side of the stamped paper would ~~xxx~~ usually be sufficient to admit the entire instrument. Thirdly the printed unstamped paper provides for the whole of the instrument being written thereon and apparently only a part of the instrument is repeated on the stamped paper. That appears an irregular method of drawing up an instrument.

Id/- P.N.M.
21/6.
Remembrancer of Legal Affairs.

U.R. to R.D., No. 4877 dt. the 22nd June 1943.

5745/11-5-43.

Submitted.

2. Please see R.D. notes at pages 21-22 ante. The Under Secretary, R.D., is of the view that receipts passed by a native state in respect of al payments made by the state to and in particular to the compensations under the reciprocal arrangement for taxation of motor vehicles sanctioned in G.R. H.D. No. 6832/3 XXIV, dated the 9th March 1942 are exempt from stamp duty in view of the orders issued in G.R. H.D. No. 10177/24, dated 1-9-1929. The R.L.A. is requested to state whether this is view is correct.

Sd/- P.S. Kadkarni.
7/6.

S.A.S. Id/- R.T.K.
11/6.

A.L.R. I agree
Id/- R.S.N.
11/6.

R.L.A. Id/- P.N.M.
14/6.

Office of the R. L. A.

The view taken by Under Secretary, of R.L.A.'s opinion No. O. Stamp 6, dated 31st October 1938, at page 32 ante is correct.

Id/- PNM.
15/6
Remembrancer of Legal Affairs.

U.R. to R.D. (through F.D.), No. 4271,
dated the 17th June 1943.

No. 5910
Office of the
Remembrancer of Legal Affairs.
Bombay Castle, 1st Sept. 1943

From

P. M. Moos, Esquire, Bar-at-Law, I.C.S.,
Remembrancer of Legal Affairs.

To

The Superintendent of Stamps,
Bombay.

Sir,

With reference to your letter No. 6137/3, dated the 16th July 1943, I have the honour to observe as under:-

In this case Messrs. Grimsley & Co. applied to you for denoting under section 16 of the Stamp Act, on the duplicate of a power of attorney, the duty paid upon the original power of attorney. In actual practice the duty paid on the original is denoted on a duplicate deed by a certificate endorsed thereon to the effect that the proper stamp duty payable on the original document has been paid. It is true that for the purpose of endorsing such a certificate on the duplicate power of attorney, it was necessary for you to consider whether the proper duty had been paid on the original power of attorney. But on the well established principle that the stamp duty payable on an instrument must be determined by referring to the terms of the instrument and the Court is not entitled to take into consideration evidence debors the instrument, it would not be necessary for, nor would it be permissible to you to look into the contents of the deed of hypothecation in this case for the purpose of being satisfied that the proper duty had been paid on the original power of attorney. Accordingly the answer to question No. 1 in your letter is that you were not justified in calling for the said deed of hypothecation.

2. Regarding the question whether you can for the

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purpose of certification under section 16 call for inspection of any other documents, it is clear that, for the reasons stated in answer to question No. 1, it is not necessary for you when acting under section 16 to call for any other document, nor are you authorised under the provisions of the Act to do so. The only case in which you could call for extrinsic evidence by production of documents is when an instrument is brought to you under section 31 of the Stamp Act, for your opinion as to the duty with which it is chargeable. On the other point raised in question 2 whether any documents produced before you in compliance with a demand made by you in that behalf while acting under section 16 could be treated as having come before you in the performance of your functions within the meaning of section 33, sub-section (1) of the Stamp Act, the answer would be that, if it is conceded that you are not authorised to order the production of the document, it cannot be held that the document, so produced in compliance with an unauthorised demand by you, came before you in the performance of your functions. It has been so held in 13 Lahore, 745.

3. In the circumstances contemplated in question Nos 3 all that you could do would be to move the Government to launch a prosecution under section 62. Before such a prosecution could be launched the sanction of the Collector would be required under section 70, sub-section (1), but the Act does not empower the Collector to take any action in the matter himself. The only authority vested in the Collector by the Act for action in respect of a document insufficiently stamped is under section 40 of the Act. But that section can have no application unless a document has been previously impounded under section 33.

4. I agree with you that the power of attorney in this case also comprises a mortgage by the donors of the power in favour of the bank and this is on the ground that the power

has been executed in consid-eration of advances having been made by the bank to the donors and that the power authorises the bank to pay and discharge out of any moneys recovered under this power all or any of such advances due to the bank. In other words, this is an instrument whereby for the purpose of securing moneys advanced by the bank the donors have transferred or assigned in favour of the bank by way of collateral security all moneys which might become payable to the donors under contracts entered into by them with Government for supply of goods. Accordingly you would be justified in levying duty on the instrument under Article 40B in addition to the duty payable thereon as a power of attorney. But there is a further difficulty in this case, viz. that the amount of advances intended to be secured by the document has not been specified. The omission to state the amount intended to be secured under this instrument no doubt constitutes an infringement of section 27 of the Stamp Act, but the amount not having been mentioned in the instrument no duty could be levied on the instrument in so far as it operates as a morgage. 44 All. 339 is an authority for this proposition. In that case a deed of gift of immovable property was executed but the value of the property, the subject matter of the deed, was not set forth and the Court held that this omission no doubt was a contravention of section 27 of the Act, but that the instrument as it stood did not require any stamp under the Act.

The documents received with your letter under reference are returned herewith.

Yours obedient servant,

Id/- P.N.M.
31/8

Remembrancer of Legal Affairs.

MSR.

Letter. No. 6071

Office of the
Remembrancer of Legal Affairs
Bombay Castle,
9th September 1943

From

P.M. Moos, Bar-at-Law, I.C.S.,
Remembrancer of Legal Affairs.

To

The Superintendent of Stamps,
Bombay.

Sir,

With reference to your letter No. 6495/3 dated 31st July 1943 I have the honour to forward herewith my opinion in the matter.

2. The papers accompanying your letter under reference are sent herewith.

I have the honour to be,

Sir,

Your most obedient servant,

Id/- P.M.M.

8/9

Remembrancer of Legal Affairs.

Office of the R. L. A.

One Chaturbhuj Vallabhdas created a trust and settled thereby a sum of Rs. 70,000/- for the benefit of his wife and son. Clause 3 of the trust deed authorises the trustees to invest this sum (1) in any of the modes of investment authorised by the Indian Trusts Act or any other enactment for the time being in force in that behalf as investments for trust moneys, (2) in purchase of immoveable property ~~within~~ in ~~the~~ India, (3) on the first mortgage of immoveable property situate in the Bombay Presidency. The document was executed in Cutch Mandvi on 15th August 1938 and is stated to have been first received British India on 5th June 1943. As it authorises the trustees to invest money on properties situate in British India, the Superintendent of Stamps held it to be chargeable with duty under section 3(c) of the Indian Stamp Act and called upon the Solicitors of the party to pay the duty of Rs. 525/- under Art. 58-A of Schedule I. The Solicitors contend that section 3(c) has no application for reasons stated in their letter. The R.L.A. is accordingly requested to advise, whether the document is chargeable with duty under Art. 58-A of Schedule I read with section 3(c) of the Indian Stamp Act, 1899.

2. Section 3(c) of the Indian Stamp Act, 1899, provides that every instrument other than a bill of exchange or promissory note mentioned in that Schedule, which not having been previously executed by any person is executed out of British India on or after the day, relates to any property situate or to any matter or thing done or to be done in British India and is received in British India. "Instrument" as defined in section 2(14) includes every document by which any right

or liability is, or purports to be created, transferred, limited, extended, extinquished or recorded. The instrument in question is a deed of settlment in respect of a sum of Rs. 100000 and so faf as that settlement is concerned the instrument does not relate to any property or to any matter or thing done or to be done in British India nor creation of the settlement. No doubt it does not provide for power of the trustees to invest money in property in India or in Bombay Presidency, and India or the Bombay Presidency includes the Province of Bombay; but this discretionary power of the trustees is not one relating to something to be done in connection with the creation of the settlement under th deed of settlement. Consequently the instrument does not appear to fall under section 3(a) of the Stamp Act.

3. The instrument is brought in British India and is presented for adjudication under section 31. Consequently the Superintendent of Stamps will have jurisdiction to adjudicate and certify under section 32(2) that the instrument is not chargeable with duty.

Id/- P.M.M.
8/9.
Remembrancer of Legal Affairs.

MSR.

No. 7075
Office of the
Remembrancer of Legal Affairs

Bombay Castle, 23rd October 1945.

From

P.M. Moos, Esquire, Bar-at-Law, I.C.S.
Remembrancer of Legal Affairs;

To

The Superintendent of Stamps,
Bombay.

Subject :- Deed of partition
adjudication of duty on

Sir,

With reference to your letter No. 7495/S, dated the 1st September 1945 on the subject noted above, I have the honour to forward herewith my opinion in the matter.

The document sent with your letter under reference is returned herewith.

Your obedient servant,

sd/- P.M.M.

22/10.

Remembrancer of Legal Affairs,

MSR.

14/6.

Office of the R. L. A.

Persons holding property either as tenants-in-common or as joint tenants are co-owners within the meaning of section 2(15) of the Indian Stamp Act, 1899 (see Salmond's Jurisprudence, 8th edn., p.284; sections 44 and 47 and the illustration to the latter section of the Transfer of Property Act; and Hogha's Indian Conveyancer, 2nd edn., p. 404). Although the R.L.A.'s opinion No. 5896, dated 20th July 1942 is correct on facts as stated therein regarding the chargeability of the document to stamp duty, the statement contained in that opinion that the tenants-in-common are not co-owners is not quite correct and consequently that opinion of the R.L.A. may be taken to have been modified to that extent.

2. The document in question provides for the partition between the three brothers (1) Shavaksha (2) Ratanshah and (3) Hirjibhoy of the properties held by them as tenants-in-common and for payment by Ratanshah of Rs. 7134 to Shavaksha and Rs. 6553 to Hirjibhoy for an equalisition of shares. This appears to be in the form of a partition deed at page 408 of Hogha's Indian Conveyancer. It is neither a conveyance nor an instrument of exchange. Consequently it is liable to stamp duty as an instrument of partition. The view taken by Messrs. Aibara & Co., Solicitors appears to be correct.

Sd/- P.N. Moos.

Remembrancer of Legal Affairs.

MSR.

14/6.

Letter: No. 8144

Office of the
Remembrancer of Legal Affairs.
Bombay Castle,
5th November 1945.

To
The Superintendent of Stamps,
General Stamp Office, Bombay.

Re: Trust Deed:
Adjudication of stamp duty on
.....

With reference to your letter No. 8000/B, dated 16th September 1945, on the subject noted above, I have the honour to observe as under:-

The document proposed to be executed recites that at different sessions of the All-India Swetamber Sthanakwasi Jain Conference subscriptions were collected for a fund to be utilised for the promotion of higher education amongst Swetamber Jains. The funds so collected are now represented by the sum of Rs. 7070-12-0, the Government Securities and the piece of land at Poona referred to in the said Instrument.

As regards the said sum of Rs. 7070-12-0 and the Government Securities it is clear from the recitals contained in the document that there has not been any previous disposition in respect thereof prior to the execution of the deed under consideration. In 35 Bom.444 it has been held that contributions made by different persons to a fund, eventhough accompanied by letters from the donors expressing their wishes withregard to the utilisation of the amounts so contributed, would not amount to a disposition in writing of the amount of such contribution. The Solicitors for the parties in their letter to the Superintendent of Stamps have invited his attention to a passage in the judgment in the said case at page 447. The observations contained in the said passage, far from supporting their contention that the

document, in so far as it relates to the said cash and Government Securities, is a declaration of trust, constitute the very basis for thedecision reached in that case that there had not been any previous disposition in writing of the funds referred to in that case and that accordingly the document had to be construed as a deed of settlement. In view of the said observations contained in that judgment it appears that the said Solicitors have themselves realised the impossibility and the futility of arguing that there has been a previous disposition in writing of the said cash and Government Securities and they have been constrained to stop short at contending merely that "there has already been a disposition" in respect of the said funds. Even on the contentions urged by them, the instrument, in so far as it relates to the trusts of the said amount and the said Government Securities, would be a deed of settlement chargeable with stamp duty under Article 58A in Schedule I to the Indian Stamp Act and not a declaration of trust as there has been no previous disposition in writing of the said funds.

As regards the plot of land in Poona, the document recites that the conference by a resolution authorised four persons as members of the Boarding Committee to purchase a plot of land in Poona and that the said persons accordingly purchased land and took the conveyance of the same in their names. The said plot of land was pruchased by the said persons as members of a managing body on behalf of the conference and as representing the conference. It is not permissible to argue that the purchase of the said plot by the said persons in their own names in pursuance of the resolution authorising them to do so constitutes a disposition of the said property by the conference in favour of the said persons; and this would be fairly obvious when it is realised that prior to and independently of the said conveyance the conference had no title

MSR.
14/6.

to nor any right or interest in the said plot of which it would make a disposition in favour of th those persons. Accordingly the document, also in so far as it declares the trusts of the said plot, is a deed of settlement and not a transfer of trust property from one trustee to another under Article 62(e) and it should be stamped under Article 58A in Schedule I to the Indian Stamp Act in its application to the Province of Bombay for an amount equal to the present market value of the said plot together with compound wall erected thereon referred to in the instrument.

2. The document forwarded by you is returned herewith.

Sd/- P.M.M.
4/11.
Remembrancer of Legal Affairs.

Office of the R. L. A.

Proviso (1) to section 3 read with section 29 of the Indian Stamp Act, 1899, makes it clear that an instrument the cos of which government has by the terms of t the instrument undertaken to bear would b exempt from stamp duty. The view taken by the F.D. is correct.

Id/- P.N.M.
3/3.
Remembrancer of Legal Affairs.

U.R. to F.D., No. 1598 dated the
6th March 1943.

Letter. No. 9018

Office of the
Remembrancer of Legal Affai
Bombay Castle,
7th December 1943.

To

The Superintendent of Stamps,
Bombay.

Subject:- Appointment of new Trustees
d/ 22-10-1943.
Legy of Stamp duty on.
.....

Sir,

Anent your letter No. 9792/s dated 11th November 1943 on the above subject, I have the honour to observe as under:-

Three trustees were appointed under the Deed of Settlement dated 24th January 1927. As two of the trustees, Messrs. Umar Haji Ismail and Suleman Haji Ismail desired to be discharged from the trust, in exercise of the power given or vested in him by the said deed of Settlement, the Continuing Trustees, Mr. Tar Mahomed Haji Ismail, appointedtwo persons, Messrs. Ismail Tar Mahomed and Hyam[illegible]ar Mahomed as new Trustees in place of the retiring trustees. The deed of appointment which is the document now in question recites that the continuing and retiring trustees handed over to the continuing and new trustees the sum of Rs. 20937-8-0 being the amount of the tust property, the receipt whereof they admit and acknowledge. In clause 3 of the document in question the following recitals are made :-

"That the continuing trustee and the new trustees do and each of them doth hereby release and discharge the Retiring Trustees from all actions, suits,

claims, accounts and demands for or in respect of the Trust property and all other (if any) property which now is or at any time was subject to the trusts and provisions of the said Deed of Settlement or the income thereof or any part thereof respectively or in respect of any act matter or thing made done permitted omitted or neglected by the Retiring Trustees or the Trustees or trustee for the time being of the said Deed of Settlement in or about the execution of the Trusts of the said Deed of Settlement or for or in respect of any other thing in any way relating to the premises.

The question for consideration is whether the document is also chargeable with stamp duty as a Release under Art. 55 of Schedule I to the Indian Stamp Act, 1899.

2. Under Section 71(c) of the Indian Trusts Act, 1882 a trustee may be discharged by such means as may be prescribed by the instrument. Under section 25 where a trustee succeeds another he is not as much liable for the acts or defaults of his predecessor. By the deed of appointment in question two of the old trustees have been replaced by two new trustees. The old trustees who have been discharged cannot by the mere fact of appointment of new trustees be relieved of the liability for their acts or defaults during the period they held the office. Consequently the deed in question will be liable to stamp duty also under Art. 55(b) since it provides for release of the retiring trustees from all liabilities etc. The view taken by the Sub-Registrar of Bombay is correct.

3. The document accompanying your letter under reference is sent herewith.

Your obedient servant,

Id/- P.N.M.
6/12.

Remembrancer of Legal Affairs.

MKR.
14/6.

No. 9405
Office of the
Remembrancer of Legal Affairs,
Bombay Castle. 24th December 1943.

MEMORANDUM.

With reference to the Superintendentof Stamps letter No. 10738/S dated 8th December 1943 the R.L.A. has the honour to observe as follows :-

The lucid opinion given by Sir Jamshed Kanga is unassailable. The grounds advanced by the Superintendent of Stamps in support of his reference are neither sound nor sustainable in law. On the facts it is impossible to construe the letter dated 15th October 1942 as a conveyance. The operative part of it does not purport to transfer any property and consequently it is not a conveyance within the meaning of section 2(10) of the Indian Stamp Act, 1899. No purchaser in his senses would treat it as a valid instrument in completion of his title. It is true that the agreement of sale dated 15th October 1942 provides for payment of an additional consideration of Rs. 14,500; but this agreement cannot be divorced from the sale transaction and treated as a bond for purposes of stamp duty.

The present reference has been signed on behalf of the Superintendent of Stamps, but it is informally ascertained that the reference was neither seen nor approved by the Superintendent before issue. It is requested that all references to the R.L.A. should in future be submitted under the Superintendent's own signature.

The R.L.A. also fails to appreciate the Superintendent's request for very early disposal of the reference when as a matter of fact the Superintendent's office did not regard it as of any special urgency and kept the case pending for many months.

M/- P.N.M.
25/12.
Remembrancer of Legal Affairs

MSR.
14/6.